

Community Protocols and local community participation in international environmental law

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by

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How can we achieve the aim of better involving local communities in shaping a body of international environmental law that addresses global problems with local sensitivity? This blog post explores the potential of community protocols from a practical perspective to see how they could contribute to this goal.

What are community protocols?

Community protocols have attracted attention from [policymakers](#) at the Convention on Biological Diversity (CBD) (they are recognized in its [Nagoya Protocol](#)), from academics, civil society activists and communities alike. They are documents produced by local communities to convey information about their ways of life, their protection of environmental “goods”, and more (more information on the Natural Justice website [here](#)). They link this information to local, national and international law and policy to bolster communities’ claims, usually with the help of NGOs or other actors. Community protocols are often drafted in response to some move to access community land and resources. Thus, their main purpose is to inform actors, whether private, public, or both, of communities’ importance and points of view. Community protocols have proved valuable, if not infallible, instruments in informing dialogues between those affected by a project and those proposing it.

This short blog post explores the potential of community protocols from another angle – as sources of valuable information for global level decision-making. I set

out this argument in more detail in a recent open access [book](#), outlining the need and current opportunities available to communities to shape debates in the CBD. That analysis reveals that the CBD often calls for local communities to provide information. This opportunity could allow them to leapfrog national gatekeepers to speak directly to the CBD secretariat (see [Parks 2020](#)). This is where community protocols may play a role as repositories of information useful to the CBD, and indeed other global environmental governance arenas.

If they are to “speak truth to power” in any way, the processes that lead to a community adopting a protocol have to be considered. Only protocols that adopt an inclusive and participatory – or *deliberative* – negotiation method can face the power asymmetries between communities and the actors they engage with (see also this [blog post](#)). And it must be remembered that community protocols are only *one* available course for collective action, and are a less contentious option compared to, say, protest. As principally domestic instruments, they may only be chosen by communities in circumstances where a dialogue with external actors is considered possible – that is in relatively open political contexts rather than repressive ones. Given these caveats, how can community protocols “speak” to the global level?

[Bavikatte, Robinson and Oliva](#) (2015), define a community protocol as “a convivial legal tool” that “begins a dialogue that goes beyond a purely instrumentalist or use-value interaction and embarks on building a relationship. Through its community protocol, a community says to the listener: if you want to access our lands, biodiversity, and knowledge, then you need to hear our story, you need to understand what these things mean to us, what our values are, and how we make decisions” (20). The defensive character of community protocols is at the fore in this definition. Elsewhere, they are described as proactive instruments that outline communities’ visions for future development ([Jonas, Bavikatte and Shrumm, 2010](#)). It is from this perspective that community protocols can be understood as tools for participation. In a legal pluralism approach their expressions of local community customary law and ideas of development may shape policy and law at multiple levels ([Tobin, 2013](#)).

Truth to (Global) Power – the importance of process

Community Protocols are thus in some way useful ready-made sources for local communities to pass information to the international level in addition to their role as tools for local dialogue. But their effects depend on how they translate the worldviews of the communities in question. Although important questions about how community protocols can address the dominant discursive underpinnings of international environmental law remain, the emphasis in this blogpost is on these more practical questions of translation. The thrust of the argument is that we must look beyond community protocols as instruments *per se* when thinking about how to envisage, and encourage, local community inputs into global environmental governance: we need to understand that the local processes themselves also matter. In other words, *how* decisions about what matters to a community are taken matters, whether the outcome is a community protocol or some other kind of collective action for participation.

Comparative analysis of local communities discussing community protocols shows that those able to address questions of definition (who is the community?) and adopt or adapt local forums that include all members and allow them to reach consensus are better equipped to act collectively and reach their goals (see chapters 2 and 3 in [Parks, 2020](#)). In the comparative analysis, the communities in line with this description had developed community protocols. This highlights that the *process* of negotiating a community protocol can allow important and sometimes thorny questions to be broached. It is the *participatory processes* of community protocol negotiation that emerged as key to producing meaningful information reflective of a consensus built and shared by a whole community. Community protocols were found to be of use to communities to the extent that they held real and shared meaning for that community – a finding in line with literature on collective action including civil society and social movements.

The potential for community protocols as conduits for international participation thus relies to a great extent on local processes. For example, members of the Kukula Association of traditional health practitioners in South Africa drafted a community protocol on the basis of their shared profession, but hailed from different ethnic and language groups. Because the group had to be built “from scratch” as a community, particular attention was paid to consensus building. This was seen by the Association’s members as key to the success of their community protocol ([Sibuye et al., 2012](#)). In Argentina, the community protocol of 33 communities from the Salinas Grandes area describes their own inclusive decision-making models as good practice for dialogue with other actors.

In our community life we are used to carrying out different tasks in the form of “minka”, work shared between us all, putting together the efforts of all of us for the benefit of the community or of one of its members. So we drew up this document in this way, in a communal and shared way, finding consensus between all the players in our communities, discussing each concept and each word. ([Kachi Yupi](#), community protocol of the Comunidades indígenas de las Salinas Grandes y Laguna de Guayatayoc de Jujuy y Salta, 2015, p. 5)

In these cases, negotiating a community protocol provided an opportunity to work out “who the community is”, and how it functions. There is the potential to allow communities a voice, providing a way for them to present themselves to external actors with information about the roles they play in environmental questions.

Local to Global – community protocols and NGOs for international participation

How exactly might a community protocol function for international participation? Analysis of the CBD shows that calls for information from local communities are one possible path. Case studies and the broader literature on civil society suggests that actually using this path often involves NGOs working to support local communities, notably by framing their views in the light of international, national and local law. These supporting actors are often well placed to take up the content of community protocols and deliver them to international actors (see, e.g., [Kaldor, 2003](#)).

Considering the importance of inclusive and participatory community processes, this means that a delicate balance needs to be struck by supporting communities without taking over, all the while playing a crucial role bridging the gap between local communities and international actors.

This bridging role may involve simply passing on calls for information to local communities, or may be more proactive. The literature on civil society, and global civil society in particular, supports this latter view. Several central elements in work on global civil society, defined as comprising both more and less contentious actors, underpin this. First, literature on both NGOs and social movements points to the importance of networks as a form of organization that allows resource-poor actors, often the case for local communities, individuals in social movements, small NGOs and the like, to pool resources and divide labour. In this view we can think of communities and their supporting actors as nodes in a loose, informal network of global civil society, passing information up and down from local to global level (and indeed across local contexts). This is by no means simple: just as power asymmetries shape international environmental law, so they shape the relationships between institutions of global environmental governance and civil society, and relationships within civil society itself. The phenomenon of “NGOization” ([Choudry and Kapoor, 2013](#)) is used to describe the process whereby civil society groups are, over time, shaped by their relationships with institutions to the extent that they then become agents of their power, and spread this throughout their networks. Yet in recent years many NGOs – particularly those in the environmental sphere – have begun to move away from these institutional relationships, often as a result of increasing disappointment with the lack of real progress in environmental protection flowing from multilateral diplomacy and environmental agreements. Work on community protocols has flourished in this context, and holds some promise for that same reason.

In sum, community protocols in and of themselves do not hold any magic answer as to how to involve local voices in global decision-making. Rather, they are one way of drawing attention to the importance of local participation and politics when thinking about this question. Many scholars consider what local communities want as somehow given – an obvious fact that communities can express. The processes behind community protocols reveal that this is not so: making inclusive and shared decisions is complex and challenging at all levels. The involvement of NGOs and other supporting actors also complicates the picture and needs proper consideration. The potential of community protocols to speak from local to global thus lies in their negotiation as much as in the protocol as an end product.

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